



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR part 52**

**[EPA-R09-OAR-2019-0165; FRL-10002-05-Region 9]**

### **Air Plan Approval; California; Yolo-Solano Air Quality Management District; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing action on a revision to the Yolo-Solano Air Quality Management District (YSAQMD or “the District”) portion of the California State Implementation Plan (SIP) to approve a rule governing issuance of permits for stationary sources emitting fine particulate matter (PM<sub>2.5</sub>) and PM<sub>2.5</sub> precursors, including review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”). Specifically, the approval pertains to YSAQMD Rule 3.25, “Federal New Source Review for New and Modified Major PM<sub>2.5</sub> Sources.”

**DATES:** This rule is effective on **[Insert date 30 days after publication in the FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0165. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Margaret Waldon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3987 or by email at [waldon.margaret@epa.gov](mailto:waldon.margaret@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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### **I. Proposed Action**

On July 11, 2019 (84 FR 33030), the EPA proposed to fully approve the following rule that was submitted for incorporation in the YSAQMD portion of the California SIP.

**Table 1 Submitted Rule**

Rule #	Rule Title	Amended	Submitted
3.25	Federal New Source Review for New and Modified Major PM <sub>2.5</sub> Sources	05/15/19	06/04/19

We proposed approval of this rule because we determined that the rule meets the statutory requirements for SIP revisions as specified in section 110(l) of the CAA, as well as the substantive statutory and regulatory requirements found in CAA sections 110(a)(2), 172, 173, and 189(e), and 40 CFR 51.160 – 51.165.

### **II. Public Comments and EPA Responses**

We received one (1) comment from the Center for Biological Diversity regarding our proposed approval of Rule 3.25 into the Yolo-Solano AQMD portion of the California SIP. The commenter stated that the definition of the term “significant” found in YSAQMD’s Rule 3.25, section 212.3, is inconsistent with the significant emissions rate found in 40 CFR 51.165(a)(1)(x)(A). The commenter stated that section 212.3 incorrectly defines a significant emission rate for nitrogen dioxide (NO<sub>2</sub>) rather than nitrogen oxides (NO<sub>x</sub>). The commenter stated that by defining a significant emission rate for NO<sub>2</sub> instead of NO<sub>x</sub>, the YSAQMD ignored the technical distinction under federal law and the broader class of regulated NO<sub>x</sub> species. The commenter stated that the EPA should not approve Rule 3.25 until the YSAQMD corrects the discrepancy in section 212.3.

The EPA agrees with the commenter that Rule 3.25’s definition of “significant” specifies an emission rate for NO<sub>2</sub>, whereas the EPA’s definition of “significant” at 40 CFR 51.165(a)(1)(x)(A) specifies an emission rate for NO<sub>x</sub>. This discrepancy warrants careful consideration because Rule 3.25’s definition of “significant” is part of the evaluation of whether a project will increase emissions of PM<sub>2.5</sub> and/or PM<sub>2.5</sub> precursors beyond specified thresholds, thereby triggering requirements applicable to “major modifications,” such as those for pollution controls and offsets. In considering the comment, we reviewed YSAQMD’s SIP-approved permitting rules to determine whether there might be a mechanism other than Rule 3.25 that properly regulates increases of NO<sub>x</sub> emissions resulting from physical or operational changes at a stationary source. We found that SIP-approved YSAQMD Rule 3.4, “New Source Review,” provides such a mechanism.

The EPA approved Rule 3.4, which implements permitting requirements for new and modified stationary sources, into the California SIP in 1997.<sup>1</sup> As part of its approval of Rule 3.4, the EPA determined that the rule meets all federal requirements for nonattainment New Source Review (NNSR) permitting.<sup>2</sup> Rule 3.4 contains requirements to evaluate emission increases of NO<sub>x</sub> as a nonattainment pollutant and imposes NNSR requirements applicable to major modifications, such as requirements for pollution controls and offsets, that the EPA has determined meet federal requirements. Moreover, because YSAQMD's jurisdiction includes areas designated nonattainment for ozone as well as PM<sub>2.5</sub>, YSAQMD uses Rule 3.4 to regulate NO<sub>x</sub> (and volatile organic compounds) as an ozone precursor.<sup>3</sup> And, because Rule 3.4 contains the EPA's requirements for ozone nonattainment areas classified as severe, Rule 3.4 regulates NO<sub>x</sub> as an ozone precursor at lower applicability thresholds and higher offset ratios than the EPA's requirements for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor that apply in PM<sub>2.5</sub> nonattainment areas classified as moderate (such as the PM<sub>2.5</sub> nonattainment area regulated by YSAQMD). In other words, Rule 3.4 regulates NO<sub>x</sub> more stringently than the EPA's regulations or Rule 3.25 regulate NO<sub>x</sub> as a PM<sub>2.5</sub> precursor. We provide additional explanation below regarding Rule 3.4's regulation of NO<sub>x</sub> as a precursor to PM<sub>2.5</sub>, consistent with federal requirements.

First, we note that Rule 3.4's definition of "major stationary source" specifies a threshold of 25 tons per year (tpy) for NO<sub>x</sub> emissions, whereas the definitions of "major stationary source" in the EPA's NNSR regulations and Rule 3.25 specify a threshold of 100 tpy for PM<sub>2.5</sub>

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<sup>1</sup> The EPA approved Rule 3.4 into the California SIP on July 7, 1997. 62 FR 36214.

<sup>2</sup> Id. Requirements for a NNSR program include application of the lowest achievable emission rate (LAER) and providing offsets for emission increases.

<sup>3</sup> At the time of the EPA's action on Rule 3.4, areas within YSAQMD's jurisdiction were classified as severe nonattainment for the 1979 1-hour ozone NAAQS. Currently, these areas are classified as severe nonattainment for the 2008 8-hour ozone NAAQS and moderate nonattainment for the 2015 8-hour ozone NAAQS. 40 CFR 81.305.

precursors such as NO<sub>x</sub>.<sup>4</sup> Rule 3.4's lower threshold means that all modification projects at major stationary sources that would be required to be reviewed under the EPA's NNSR requirements for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor are in fact subject to review.

The EPA also compared Rule 3.4's definition of "major modification" with definitions in the EPA's regulations and Rule 3.25.<sup>5</sup> Rule 3.4's definition of "major modification" specifies a lower threshold for NO<sub>x</sub> than the EPA's PM<sub>2.5</sub> NNSR regulations or Rule 3.25; specifically, Rule 3.4 sets an applicability threshold for NO<sub>x</sub> at 25 tpy, whereas the EPA's regulations for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor and Rule 3.25's regulation of NO<sub>2</sub> set the applicability threshold at 40 tpy.<sup>6</sup> Therefore, Rule 3.4's lower threshold ensures that any modification that would result in a significant emission increase of NO<sub>x</sub> will be subject to NNSR requirements (such as those for pollution controls and offsets) consistent with the EPA's NNSR requirements for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor and Rule 3.25.

In addition, the EPA compared offset requirements in Rule 3.4 with offset requirements in the EPA's regulations and Rule 3.25. Rule 3.4's required offset ratio for NO<sub>x</sub> is 1:1.3, whereas the offset ratio required by the EPA's NNSR regulations for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor and Rule 3.25 is 1:1.<sup>7</sup> Rule 3.4's higher ratio means that Rule 3.4 requires more offsets for NO<sub>x</sub> than the EPA's NNSR requirements for NO<sub>x</sub> as a PM<sub>2.5</sub> precursor or Rule 3.25.

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<sup>4</sup> Compare the definition of "major stationary source" in Rule 3.4, section 222 (25 tpy NO<sub>x</sub>), with the EPA's definition of "major stationary source" (100 tpy of NO<sub>x</sub> for PM<sub>2.5</sub> nonattainment areas classified as moderate). 40 CFR 51.165(a)(1)(iv)(1). Rule 3.25's definition of "major stationary source" also specifies a threshold of 100 tpy. Rule 3.25, section 206.

<sup>5</sup> The term "major modification" in Rule 3.25 includes the term "significant emissions increase" and therefore relates directly to the commenter's concern regarding Rule 3.25's definition of "significant."

<sup>6</sup> Compare the definition of "major modification" in Rule 3.4, section 221 (25 tpy threshold), with the EPA's definition of "major modification" (40 tpy of NO<sub>x</sub> for PM<sub>2.5</sub> nonattainment areas). 40 CFR 51.165(a)(1)(x)(A). As noted by the commenter, Rule 3.25's definition of "significant" is 40 tpy of NO<sub>2</sub>, which means that Rule 3.25's definition of "major modification," which uses the term "significant," also applies a threshold of 40 tpy for NO<sub>2</sub>. Rule 3.25, sections 205 and 212.

<sup>7</sup> Compare Rule 3.4, section 303 (1:1.3 offset ratio), with the EPA's offset ratio of 1:1. 40 CFR 51.165(a)(9)(i). Rule 3.25 also requires an offset ratio of 1:1. Rule 3.25, section 302.

Accordingly, because the requirements for a NNSR program applicable to NO<sub>x</sub> as a PM<sub>2.5</sub> precursor are already satisfied by SIP-approved Rule 3.4, the reference to NO<sub>2</sub> in Rule 3.25's definition of "significant" has no practical impact. We note that the implementation of Rule 3.4 in conjunction with Rule 3.25 should not present undue difficulty because YSAQMD's jurisdiction is classified as nonattainment for the 2008 and 2015 ozone NAAQS; therefore, projects at major stationary sources that increase NO<sub>x</sub> emissions are already required to be evaluated under Rule 3.4 for reasons related to ozone nonattainment.<sup>8</sup> Finally, we note that, despite the overlap with Rule 3.4, Rule 3.25 is a necessary addition to the YSAQMD SIP because it regulates PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors not regulated by Rule 3.4 – specifically, sulfur dioxide and ammonia. We therefore find that finalization of our action as proposed is appropriate.

### **III. EPA Action**

We received one (1) adverse comment regarding the proposed of Rule 3.25 into the YSAQMD portion of the California SIP. However, for the reasons set forth in our proposed action and above in Section II, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is approving Rule 3.25 "Federal New Source Review for New and Modified Major PM<sub>2.5</sub> Sources" into the YSAQMD portion of the California SIP.

### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the YSAQMD rule listed in Table 1 of this notice. The EPA has made, and will

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<sup>8</sup> Rule 3.4's applicability is not tied to the area's nonattainment status with respect to ozone. For example, if the ozone nonattainment area within YSAQMD's jurisdiction were redesignated to attainment for ozone but remained nonattainment for PM<sub>2.5</sub>, Rule 3.4's NNSR requirements would remain applicable to NO<sub>x</sub> as a PM<sub>2.5</sub> precursor.

continue to make, this document available electronically through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect



until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 1, 2019.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart F – California**

2. Section 52.220 is amended by adding paragraph (c)(524) to read as follows:

**§52.220 Identification of plan—in part.**

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(c) \* \* \*

(524) New additional materials for the following AQMD was submitted on June 4, 2019 by the Governor’s designee.

(i) *Incorporation by reference.* (A) Yolo-Solano Air Quality Management District.

(1) Rule 3.25, “Federal New Source Review for New and Modified Major PM<sub>2.5</sub> Sources,” amended May 15, 2019.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

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[FR Doc. 2019-27541 Filed: 12/27/2019 8:45 am; Publication Date: 12/30/2019]